

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Quemetco, Incorporated  
720 South Seventh Avenue  
Industry, California 91746

ID No. CAD066233966

Respondent.

Docket HWCA 2006-1070

CONSENT ORDER

Health and Safety Code

Section 25187

The State Department of Toxic Substances Control (Department) and Quemetco, Incorporated, a Delaware Corporation doing business in California (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates, handles, treats, and/or stores hazardous waste at 720 South Seventh Avenue, Industry, California 91746 (Facility). The Department authorized Respondent to manage hazardous waste pursuant to an Interim Status Document, issued on May 16, 1983. An Emergency Hazardous Waste Facility Permit was issued January 5, 2006 and extended to March 23, 2006 (Emergency Permit). A Hazardous Waste Facility Permit was issued June 5, 2006.

2. The Department inspected the Facility on December 20, 21, and 22, 2005, January 13, 2006 and September 29, 2006.

3. The Department alleges the following violations:

3.1.1. Respondent violated Health and Safety Code section 25202, in that on or about January 15 through January 27, 2006, Respondent illegally stored hazardous waste lead slag received from off-site in rail cars on its rail spur. The rail spur is not authorized for storage of hazardous waste pursuant to the Facility's interim status

document or Emergency Permit. Respondent may, pursuant to Health and Safety Code section 25200.19, store hazardous waste in its rail cars for up to ten days.

3.1.2. Respondent violated Health and Safety Code section 25201, subdivision (a), in that on or about September 26 and September 27, 2006, Respondent illegally stored hazardous waste lead slag received from off-site in rail cars on the portion of the rail spur, sometimes referred to as the "Witco rail spur" located 14755 Salt Lake Avenue, City of Industry, CA 91749, sometimes referred to as the "Richardson Property." The Richardson Property is owned by Quemetco West LLC which is also the owner of the Facility. The Richardson Property is not part of the Facility. Neither the Witco rail spur nor the Richardson Property is authorized to store hazardous waste pursuant to the Facility's hazardous waste facility permit.

3.2. Respondent violated California Code of Regulations, title 22, section 66270.30, subdivision (a), in that on or about January 30 and February 28, 2006, the Respondent violated its reporting requirements pursuant to condition 8(h) of the Emergency Permit. To wit: On January 30, 2006, Respondent failed to provide written notice to the Department with a description of the steps to be taken to repair the containment building and the schedule for accomplishing the work (the Plan). On February 28, 2006, Respondent, upon completion of all repairs and cleanup, failed to notify the Department in writing and provide a certification signed by a qualified, registered professional engineer that said repairs and cleanup had been completed as required by section (h) paragraph 1 of the Plan. Respondent also failed to submit a completion report to the Department detailing the storage for any wastes retained on-site beyond ten days as a result of activities authorized under the Emergency Permit. On March 13, 2006, and in a follow up report dated April 21, 2006, Respondent did submit the written reports and certification of completion of repairs as had been required pursuant to condition 8 (h) of the Emergency Permit.

3.3. Respondent violated California Code of Regulations, title 22, section 66265.31, in that on or about December 20, 2005, Respondent failed to maintain the containment building (Batch House) in a manner to minimize the possibility of a release of hazardous waste. The Batch House's support structures had deteriorated causing the roof to partially collapse. As a result, the Los Angeles County Building and Safety Department "red-tagged" the building denying access to the building until the building was repaired to its satisfaction.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. By entering into this Consent Order, Respondent does not admit to any of the violations alleged.

#### 10. SCHEDULE FOR COMPLIANCE

Respondent shall comply with the following:

10.1.1. The violations described above have been corrected. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited above which includes, but is not limited to the following:

10.1.2. On an annual basis, to be completed initially no later than September 30, 2007, Respondent shall perform the following tasks to ensure proper preventative maintenance of the Batch House:

(a) Respondent shall high pressure wash all of the Batch House's structural members;

(b) Respondent shall conduct a visual inspection of all of the Batch House's structural members, and the inspection shall be performed by a ("NACE") Certified Coating Inspector;

(c) The visual inspection performed by the NACE Certified Coating Inspector required in subsection (b) above shall include inspecting for anomalies such as blisters, cracking, etc., that could hinder coating performance. Any such anomalies must be promptly repaired in accordance with the coating manufacturer's recommendations to maintain coating integrity for structure protection.

(d) Respondent shall document all inspections as performed and maintain records of all inspections at the facility.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Florence Gharibian, Chief  
Glendale Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

William Jones  
Los Angeles County Fire Department  
Health Hazardous Material Section  
5285 Rickenbacker Road  
Commerce, California 90040

Robert Wienke  
Supervising Civil Engineer  
Enforcement Group  
Los Angeles County Sanitation District  
1955 Workman Mill Road  
Whittier, California 90607-4998

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department

regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

## PAYMENTS

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total amount of \$51,250. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

Photocopies of the check should be sent to:

Florence Gharibian, Chief  
Glendale Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Debra Schwartz, Staff Counsel  
Office of Legal Affairs  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

Within 30 days of the effective date of this Consent Order, Respondent shall pay \$18,750 to the Environmental Education Account of the California Protection Agency. Respondent shall pay with a check made payable to "Environmental Education Account (Fund 8020)" and send that check to Judy Tanimoto, Fiscal Office, California Environmental Protection Agency, P.O. Box 2815, Sacramento, CA 95812-2815. Respondent shall give notice of the payment to Linda S. Adams, Assistant Secretary for Fiscal and Administrative Programs at the same address and Florence Gharibian and Debra Schwartz, at the address listed above.

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11.3. Respondent hereby agrees to send one employee to the California Compliance School, Modules I-IV. The employee who attends the California Compliance School shall be an employee who is directly involved in the management of hazardous waste and who works on a regular basis in the active portion of the Facility. For example, the employee's job classification shall require that he/she work in the



containment building, off-load waste from the railcars, work in the battery storage area, work at the battery wrecker, or at the waste water treatment plant. If the Facility is uncertain as to what constitutes a qualifying employee, the Facility shall contact the Department for direction. Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department of Toxic Substances Control within 185 days of the date of this Order. In recognition of this educational investment, the penalty imposed by this Order has been reduced by \$5,000.00 if the employee satisfactorily completes the specified school and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Order. If Respondent fails to submit the certificate as required, the penalty of \$5,000.00 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a Department Branch Chief upon a written request demonstrating good cause from Respondent.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department

and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Notices under this paragraph are subject to paragraph 10.2.

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| Dated: <u>5/14/2007</u> | <u>Original signed by Mark Vondersaar</u><br>Mark Vondersaar, Vice President,<br>Quemetco, Inc.<br>Respondent Representative |
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| Dated: <u>5/17/2007</u> | <u>Original signed by Florence Gharibian</u><br>Florence Gharibian, Chief<br>Glendale Branch<br>Statewide Compliance Division<br>Department of Toxic Substances Control |
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